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November 27, 2020

Deana Williamson, Clerk
Court of Criminal Appeals of Texas
Austin, Texas

via e-file

FILED
COURT OF CRIMINAL APPEALS
12/1/2020
DEANA WILLIAMSON, CLERK

Re: *Ex parte Joseph Gomez*
Case Nos. PD-0724-20 and PD-0725-20
Letter of Supplemental Authority

Dear Ms. Williamson:

In my last letter, I notified the Court that on November 20, 2020, Mr. Gomez posted bonds of \$75,000 each in the two cases that are the subject of his applications for writ of habeas corpus and that he was subsequently released from his complained-of detention by the Sheriff of Harris County.

Because there is a rule regarding habeas corpus that “where the premise of a habeas corpus application is destroyed by subsequent developments, the legal issues raised thereunder are moot,” I, along with co-counsel, filed a motion on Mr. Gomez’s behalf to dismiss this appeal as moot. *See Bennet v. State*, 818 S.W.2d 199, 200 (Tex. App.—Houston [14th Dist.] 1991, no pet.)(quoting *Saucedo v. State*, 795 S.W.2d 8, 9 (Tex. App.—Houston [14th Dist.] 1990, no pet.)). Subsequent to the filing of that motion, however, we learned of additional authority which we believe we are obligated to notify this Court about.

First, on Wednesday this week, the United States Supreme Court in *Roman Catholic Diocese of Brooklyn v. Cuomo*, No. 20A87, 2020 WL 6948354 (U.S. Nov. 25, 2020)(per curiam), held that its action enjoining the Governor of New York’s limits on occupancy within churches during the COVID-19 pandemic was not rendered moot simply because the Governor had subsequently reclassified the areas where the churches were located making them no longer subject to the originally complained of stricter occupancy limits. *Id.* at *3. The Court noted that “injunctive relief is still called for because the applicants remain under a constant threat that the area in question will be reclassified” and that the “[t]he Governor regularly changes the classification of particular areas without prior notice. *Id.*

An argument could be made that, even though Mr. Gomez has posted bonds in the new, total amount set by the trial court of \$150,000, like the applicants in *Roman Catholic Diocese of Brooklyn*, he is still under a “constant threat” that the trial court, like it originally did, “without prior notice,” find these new, higher bonds to also be “insufficient.” Accordingly, based on the rationale in that case, this appeal may actually not be moot.

Furthermore, Mr. Gomez would direct this Court to Article 11.21, Texas Code of Criminal Procedure, which provides that, relative to habeas corpus,

The words “confined”, “imprisoned”, “in custody”, “confinement”, “imprisonment”, refer not only to the actual, corporeal and forcible detention of a person, but likewise to any coercive measures by threats, menaces or the fear of injury, whereby one person exercises a control over the person of another, and detains him within certain limits.

TEX. CODE CRIM. PROC. art. 11.21 (West Supp 2020). Based on this definition of “constraint,” Mr. Gomez would submit that he is still constrained by the trial court’s illegal action. Instead of being financially bound to appear by his original bonds totaling \$40,000, even though he is no longer in custody, he is now financially bound to appear in court by his new bonds totaling \$150,000. Stated differently, were Mr. Gomez to fail to appear before the trial court (which he does not anticipate), he would be financially liable for a higher amount that he maintains was illegally set by the trial court.

We appreciate the Court’s consideration of this matter.

Respectfully Submitted,

/s/ T. Brent Mayr

T. Brent Mayr

Attorney for Applicant, Joseph Gomez

cc: Clint Morgan, attorney for the State
& State Prosecuting Attorney Stacey Soule
via service through counsel’s electronic filing manager on November 21, 2020

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